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SA Hospital Acquisition Group, LLC

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

NORTHERN DIVISION

In re:	}	CASE NO.: 9:23-bk-10690-RC
SA HOSPITAL ACQUISITION GROUP, LLC		Chapter 11
Debtor and Debtor-in-Possession.		DEBTOR'S OPPOSITION TO TWAIN GL XXV, LLC'S MOTION TO DISMISS CHAPTER 11 CASE; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF JEFFREY AHLHOLM IN SUPPORT THEREOF
	}	[LBR 2081-1 and LBR 9075]
	}	<u>Hearing Scheduled For:</u>
	}	Date: August 18, 2023
	}	Time: 11:00 a.m.
	}	Place: Courtroom 201
	}	United States Bankruptcy Court
	}	1415 State Street
	}	Santa Barbara, CA 93101

**TO THE HONORABLE RONALD A. CLIFFORD III, UNITED STATES
BANKRUPTCY JUDGE; CREDITOR TWAIN GL XXV, LLC; RECEIVER
DANIEL WIGGINS; THE OFFICE OF THE UNITED STATES TRUSTEE; AND
OTHER CREDITORS AND PARTIES IN INTEREST:**

SA Hospital Acquisition Group, LLC ("Debtor") hereby submits its Opposition to
Twain GL XXV, LLC's ("Twain") Motion to Dismiss Chapter 11 Case, as follows:

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Twain's Motion to Dismiss Chapter 11 Case should be denied as Debtor's managing members Lawrence E. Feign and Jeffrey Ahlholm had authority to file Bankruptcy on behalf of the Debtor, despite the Circuit Court of the City of St. Louis, Missouri's appointment of Receiver Daniel Wiggins on behalf of Twain as a creditor. The authority on point is *In re Corporate & Leisure Event Productions, Inc.*, 351 B.R. 724 (Bankr. D. Ariz. 2006). In that case, the Bankruptcy Court held that when a receiver is appointed by a state court on behalf of creditor of a debtor, even if the receivership order includes restrictions on the directors of the debtor from filing Bankruptcy, such restrictions are in violation of the debtor's constitutional rights, and are not upheld by Bankruptcy Courts. (*In re Corporate & Leisure Event Productions, Inc.*, 351 B.R. 724 (Bankr. D. Ariz. 2006)).

Debtor's Chapter 11 is in the best interest of the creditors. Since May 23, 2023, when the Receiver began managing the Debtor's Hospital, the Receiver shut down the Debtor's hospital operations and has been attempting to liquidate the Debtor's assets. Through the Bankruptcy, Debtor instead will resume the Debtor's hospital operations in order to sell the hospital as a going concern and assign Tenant's Ground Lease with Twain, to generate significantly more funds to pay off the creditors of the estate. Debtor's management believes selling the Debtor and Tenant's assets together as an ongoing concern will generate approximately \$18,000,000.00 more for the creditors, then a fire sale of the assets as proposed by the Receiver.

Based on the holding in *In re Corporate & Leisure Event Productions, Inc.*, the Debtor's corporate management had authority to file Debtor's Chapter 11 case. Debtor's Chapter 11 case is in the best interest of the creditors of the estate. Wherefore, Twain's Motion to Dismiss Chapter 11 Case should be denied.

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II. SUMMARY OF PERTINENT FACTS

A. General Background of the Debtor and Debtor's Failed Sale of Debtor's Hospital to American Healthcare Systems

Jeffrey Ahlholm and Lawrence E. Feigen, as co-managing members of SA Hospital Acquisition Group, LLC, (the "Debtor") filed a voluntary Chapter 11 petition on behalf of the Debtor on August 11, 2023. The Debtor is a guarantor of debt incurred by SA Hospital Real Estate Holdings, LLC (the "Tenant"). The Debtor and Tenant have common ownership and management. Prior to appointment of the Receiver, both the Debtor and Tenant were managed by Jeffrey Ahlholm and Lawrence E. Feigen.

Twain is the owner of the raw land only and is the landlord of the Tenant. Tenant owns the buildings and improvements on the Premises. Twain shares the value and ownership of the real estate property with Tenant. Twain has no ownership interest in Debtor, which is only a guarantor of the Twain 99-year lease.

On or about December 29, 2021, Tenant and Twain entered into a 99-year ground lease (the "Ground Lease"), whereby Tenant leased Twain's property, and subleased the property to the Debtor, for the purpose of owning and operating the South City Hospital in St. Louis, Missouri (the "Hospital"), in exchange for certain base and supplement rent payments, among numerous other obligations. In conjunction with the execution of the Ground Lease, the Debtor (among other guarantors) executed a "Completion and Rent Payment Guaranty" in favor of Twain, guaranteeing all obligations owed by Tenant under the Ground Lease (the "Guaranty"). Contemporaneous with the execution of the Ground Lease and the Guaranty, Tenant and the Debtor entered into a Master Lease and Sublease Agreement permitting the Debtor to operate the Hospital (the "Sublease").

Per the Ground Lease, Tenant and Debtor made all of its quarterly rent payments to Twain from January 2022 through December 2022, which were capitalized into the Ground Lease Agreement at the mutual agreement of Twain and SA Hospital on December 29, 2021.

1 As part of the Ground Lease, Twain directly funded Building Resources, a
2 mutually approved general contractor, in the amount of \$6,460,063.24, for hospital
3 improvements, based on detailed project requests and budgets. Building Resources failed
4 to complete the construction by the agreed-upon completion date and Debtor believes
5 Building Resources misappropriated at least \$1,996,644.56 of Twain Funding for the
6 hospital improvements.

7 On May 24, 2022, Debtor entered into an Asset Purchase Agreement ("APA") and
8 customary Interim Management Agreement ("IMA") with American Healthcare Systems
9 ("AHS"). Upon entering into the APA between the Debtor and AHS, AHS began
10 transitioning the operations and management of the Debtor's hospital business to AHS
11 and AHS assumed the financial responsibility of operating the hospital at that
12 time. During the period AHS took control of the operations and management of the
13 Debtor's hospital business, AHS stopped making payments to Twain on the Ground
14 Lease, AHS incurred over \$10,000,000.00 in debt, and Debtor was named in 16 lawsuits.
15

16 *B. Appointment of the Receivership of the Debtor*

17 On May 16, 2023, Twain sued the Debtor and Tenant in the Circuit Court of the
18 City of St. Louis, Missouri, Case No. 2322-CC00960 (the "Receivership Action"). Twain
19 sought the emergency appointment of a state court receiver of the Debtor and Tenant,
20 their property and their operations. On, May 25, 2023, Circuit Court of the City of St.
21 Louis, Missouri appointed Daniel Wiggins of Morris Anderson & Associates, Ltd. (the
22 "Receiver") as receiver of the Debtor and Tenant, their operations, and their assets (the
23 "Receiver Order").

24 The Receiver promised to provide the Debtor with general ledgers and other
25 financial records at the beginning of the Receivership, but has to date yet to provide any
26 financial records to Debtor's management. Initially, the Receiver discussed with Debtor's
27 management the possibility of filing Bankruptcy for the Debtor and selling the Debtor's
28 hospital business as a going concern. Twain and the Receiver instead have temporarily

1 shut down the Debtor's hospital operations and attempted to do a liquidation of the
2 Debtor's assets which would realize far less value for the benefit of the creditors, than
3 could be realized if the Debtor is permitted to reopen the hospital and sell it as a going
4 concern.

5 *C. Debtor's Proposed Reorganization Efforts are in the Best Interest of All*
6 *Creditors of the Estate*

7 Debtor filed this Chapter 11 Bankruptcy case in an attempt to regain management
8 of the Debtor and its hospital business operations, reopen the Debtor's hospital and sell
9 the hospital and assign Tenant's Ground Lease with Twain, to generate sufficient funds to
10 pay off the creditors of the estate. Debtor's management believes selling the Debtor and
11 Tenant's assets together as an ongoing concern will generate significantly more money
12 for the creditors, then a fire sale of the assets by the Receiver. Debtor currently has three
13 (3) possible buyers lined up who Debtor believes can complete the sale, which would not
14 only pay off Twain in full, but also provide significantly more funds for the remaining
15 creditors of the estate.
16

17 Prior to the appointment of the Receiver, Debtor's management tried to discuss the
18 potential buyers Debtor has lined up with Twain, but Twain refused to entertain the idea
19 of the sale and moved forward with the receivership. The combined sale of Debtor and
20 Tenant's assets as an ongoing concern, while keeping the hospital license intact will
21 realize at least \$8,000,000.00 in additional short-term value and over \$10,000,000.00 in
22 long-term value to the creditors of the estate by keeping the residency slot contract and
23 program intact. Twain instead seeks a piecemeal fire sale of the assets, which will benefit
24 Twain, to the detriment of all the remaining creditors of the estate.

25 During the brief period of the receivership, the Receiver made no efforts to pursue
26 AHS or Building Resources to recover the significant damages these entities caused the
27 Debtor, Tenant, Twain and all the creditors of the estate.
28

Debtor's reorganization in Bankruptcy is in the best interest of all creditors, whereas the Receiver's resumption of the fire sale of the Debtor's assets will only benefit Twain and the Receiver. Through the Bankruptcy, the Debtor seeks to obtain a more experienced healthcare receivables manager along with critical licensing and compliance management while the Debtor and Tenant sell the combined assets. Debtor believes it can effectuate a sale of the Debtor and Tenant's assets quickly, given it has three (3) potential buyers lined up, which will result in the highest realized value of the Debtor's and Tenant's assets to pay significantly more to the creditors than they would receive through the Receiver's liquidation efforts.

III. ARGUMENT

A. *In re Corporate & Leisure Event Productions, Inc.*, 351 B.R. 724 (Bankr. D. Ariz. 2006) Held Restrictions in a Receiver Order Which Was Appointed by the State Court on Behalf of Creditors of a Debtor are a Violation of a Debtor's Constitutional Right to File Bankruptcy

The issue in *Corporate & Leisure Event Productions, Inc.*, 351 B.R. 724 (Bankr. D. Ariz. 2006) was who, if anyone, may file a Chapter 11 petition for a Debtor after a state court has appointed a Receiver for the debtor, enjoined the Debtor from filing a bankruptcy petition, and removed the Debtor's corporate officers and directors. The Court denied the Receiver's Motion to Dismiss and concluded that “**federal bankruptcy law preempts state law and remains available to an eligible debtor and its constituents notwithstanding creditors' use of state law remedies in an attempt to bar the bankruptcy courthouse door.**” (See *In re Corporate & Leisure Event Productions, Inc.*, 351 B.R. 724 (Bankr. D. Ariz. 2006))

In *Corporate & Leisure Event Productions, Inc.*, prepetition a Receiver was appointed by the State Court for the debtor, on behalf of numerous creditors of the debtor. The receivership order authorized the Receiver to remove "any director, officer, independent contractor, employee or agent of any of the Receivership Defendants, from

1 control of, management of, or participation in, the affairs of the Receivership
2 Defendants." It enjoined the Receivership Defendants from doing any act to interfere
3 with the Receiver's custody and management of the receivership assets, and specifically
4 enjoined them from filing "any petition on behalf of the Receivership Defendants for
5 relief under the United States Bankruptcy Code . . . without prior permission from this
6 Court." (*Id.* at 727)

7 The Receiver immediately filed a Motion to Dismiss asserting that the debtor's
8 principals engaged in a Ponzi-scheme and that based on the appointment of the Receiver,
9 and removal of the debtor's principals as officers, directors and managers of the debtor,
10 debtor's principals did not have authority to file Bankruptcy for the debtor. (*Id.* at 727)

11 The only issue was who was authorized to file Bankruptcy behalf of the debtor.
12 The Court pointed out that ordinarily, the question of who has authority to file a
13 Bankruptcy petition on behalf of a corporation is an intra-corporate dispute with some
14 officers, directors or shareholders objecting to bankruptcy relief and asserting that some
15 other shareholder, officer or director lacked sufficient corporate authority to make the
16 filing. There was no such intra-corporate dispute here. Rather, the dispute as to existence
17 of corporate authority was raised by creditors, who preferred the remedy they had in state
18 court over a bankruptcy remedy. The Court opined that while intra-corporate disputes
19 would ordinarily be governed by the law of the state of incorporation, this particular kind
20 of creditor-driven intra-corporate dispute is governed instead by federal common law. (*Id.*
21 at 728)

22 The U.S. Constitution confers on Congress the unique uniform bankruptcy power.
23 Once Congress exercises that power it preempts and supersedes all state bankruptcy and
24 insolvency laws and other state law remedies that might interfere with the uniform
25 federal bankruptcy system. (*In re Corporate & Leisure Event Productions, Inc.*, at 728;
26 U.S. CONST. art. I, § 8, cl. 4; *Cent. Va. Cmty. Coll. v. Katz*, 126 S. Ct. 990, 997-1000
27 (2006), *Sturges v. Crowninshield*, 17 U.S. (4 Wheat.) 122 (1819); *Sherwood Partners, Inc.*
28

1 v. Lycos, Inc., 394 F.3d 1198 (9th Cir. 2005) (Bankruptcy Code preempts state statute
2 giving preference avoidance powers to an assignee for benefit of creditors); *In re Miles*,
3 430 F.3d 1083, 1089 (9th Cir. 2005) (bankruptcy law preempts state remedies for bad
4 faith filing because the "complex, detailed, and comprehensive provisions of the lengthy
5 Bankruptcy Code" "create a whole system under federal control which is designed to
6 bring together and adjust all of the rights and duties of creditors and embarrassed debtors
7 alike," and which needs to be "jealously guard[ed] . . . from even slight incursions and
8 disruptions" from state law remedies), quoting *MSR Exploration, Ltd., v. Meridian Oil,*
9 *Inc.*, 74 F.3d 910, 915 (9th Cir. 2005)).

10 The Court held that "the paramount and exclusive federal jurisdiction in this
11 regard was noted early on by the great equity jurist, Justice Story. Construing a
12 bankruptcy statute that contained no automatic stay, Justice Story concluded that
13 Congress intended to vest bankruptcy courts with jurisdiction to "suspend or control all
14 proceedings in the state courts" (*In re Corporate & Leisure Event Productions, Inc.*, at
15 729; *Ex parte Christy*, 44 U.S. (3 How.) 292, 318-20 (1845)).

16 As Justice Story there noted, the Bankruptcy Act of 1841 did not specifically
17 authorize bankruptcy courts to enjoin state courts, but Congress closed this loophole in
18 the Bankruptcy Act of 1867, in which Congress for the first time amended the Judiciary
19 Act of 1793 to expressly permit federal district courts sitting in bankruptcy to stay
20 proceedings in state courts. (*In re Corporate & Leisure Event Productions, Inc.*, at 729;
21 *Peck v. Jenness*, 48 U.S. (7 How.) 612, 625-26 (1849)). The current Bankruptcy Code
22 goes even further, not only by making the stay automatic, statutory and specifically
23 applicable to government entities, **but also by specifically requiring receivers to turn**
24 **over receivership property to bankruptcy trustees and debtors in possession.** (*In re*
25 *Corporate & Leisure Event Productions, Inc.*, at 729-730, emphasis added).

26 Given the supremacy of Federal law, it is not surprising that a creditor's argument
27 that a receivership order removes authority for a debtor or its corporate constituents to
28

1 file a bankruptcy case — have concluded that **state court receivership orders cannot**
2 **bar debtors from resorting to the exclusive bankruptcy court jurisdiction.** Even prior
3 to the Chandler Act (which contained the first corporate reorganization provisions), the
4 Sixth Circuit so concluded even though the corporate debtor had consented to the
5 receivership that had been pending for over two years and even though the state court
6 "has issued the usual injunction against inference." "[T]he pendency of a receivership
7 does not ordinarily prevent the filing of a voluntary petition." The Court in *Corporate &*
8 *Leisure Event Productions* determined that this conclusion appears to be good law today.
9 (*Struthers Furnace Co. v. Grant*, 30 F.2d 576, 577 (6th Cir. 1929); *Pa. Dept. of Pub.*
10 *Welfare v. Davenport*, 495 U.S. 552, 564 (1990) ("We will not read the Bankruptcy Code
11 to erode past bankruptcy practice absent a clear indication that Congress intended such a
12 departure); *Midlantic Nat'l Bank v. N.J. Dept. of Envtl. Prot.*, 474 U.S. 494, 501 (1986)
13 ("The normal rule of statutory construction is that if Congress intends for legislation to
14 change the interpretation of a judicially created concept, it makes that intent specific. The
15 Court has followed this rule with particular care in construing the scope of bankruptcy
16 codifications."(citation omitted)).

17
18 Ten years later, the Sixth Circuit reached the same conclusion when a receivership
19 order specifically enjoined the debtor's directors, officers and stockholders "from
20 preparing or in any way aiding the institution of reorganization proceedings on behalf of
21 the debtor corporation in the District Court without the consent of such state court." That
22 court concluded that such a state court restraining order erroneously "denied to the
23 appellee, its directors, stockholders and attorneys, access to the federal courts, thus
24 depriving them of their constitutional right to relief under Sec. 77B of the Bankruptcy
25 Act," citing the Uniform Bankruptcy Power of the Constitution. (*In re Corporate &*
26 *Leisure Event Productions, Inc.*, at 730).

27
28 Shortly thereafter, the District Court for the Southern District of New York reached
the same conclusion: "The appointment by a state court of a permanent receiver with full

1 power to act for the corporation does not affect the right of directors to act on behalf of a
2 corporation in federal bankruptcy proceedings." Other courts have reached the same
3 conclusion under the current Bankruptcy Code. **The only cases to the contrary appear**
4 **to arise when there is a purely intra-corporate dispute (rather than a dispute with**
5 **creditors)** as to who has the authority to file, or where the debtor is "ineligible for debtor
6 status" under the Bankruptcy Code. ((*In re Corporate & Leisure Event Productions, Inc.*,
7 at 730-731 (emphasis added); *Merritt v. Mt. Forest Fur Farms of Am., Inc.*, 103 F.2d 69,
8 71 (6th Cir. 1939); *United States v. Kras*, 409 U.S. 434 (1973), the privileges provided by
9 the Bankruptcy Code may be among the "privileges and immunities" that the Fourteenth
10 Amendment forbids states to abridge; *Cash Currency Exchange, Inc. v. Shine (In re Cash*
11 *Currency Exchange, Inc.)*, 762 F.2d 542, 552 (7th Cir. 1985) ("[T]he exclusivity of an
12 administrative receiver's title to all assets under state law is irrelevant to the
13 determination whether a particular entity may file for bankruptcy relief."); *Larson v.*
14 *Kreislers, Inc.*, 112 B.R. 996, 998 1000 (Bankr. D.S.D. 1990) ("The court . . . has not
15 unearthed any statutory or decisional law to support the contention that a state court
16 receivership generally bars bankruptcy filing. Perhaps this is so because the argument
17 runs so blatantly against the statutory right of a debtor to the privileges of the national
18 statute on bankruptcies and the inherent prohibition against any bar by any other
19 authority to the exercise of that right. . . . [The debtor's] officers and directors could pass
20 a resolution to file bankruptcy despite state court orders not to do so."(citations omitted));
21 *In re S S Liquor Mart, Inc.*, 52 B.R. 226, 227 (Bankr. D.R.I. 1985) ("[I]t is fundamental
22 that a state court receivership proceeding may not operate to deny a corporate debtor
23 access to the federal bankruptcy courts [citations omitted] and it has been held that an
24 order in a state court receivership specifically restraining the debtor corporation, its
25 stockholders, officers, and directors from instituting federal reorganization proceedings is
26 an unconstitutional deprivation of the right to bankruptcy relief."); *In re Donaldson Ford,*
27 *Inc.*, 19 B.R. 425 (Bankr. N.D. Ohio 1982).

1 It is true that bankruptcy courts generally look to state law to determine who is
2 authorized to file a voluntary petition for a corporation, partnership or other kind of
3 organizational entity. This rule, however, derives not from the language of the
4 Bankruptcy Code (or its predecessor Bankruptcy Act), but rather from federal common
5 law in the absence of statutory directive. The Bankruptcy Code neither specifies who has
6 authority to file a corporate petition nor requires that state law be the exclusive source of
7 any such authority. (*In re Corporate & Leisure Event Productions, Inc.*, at 731).

8 As such, Federal common law is appropriate in two categories of cases, "those in
9 which a federal rule of decision is 'necessary to protect uniquely federal interests,' and
10 those in which Congress has given the courts the power to develop substantive law."
11 *Texas Indus., Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 640-41 (1981) (citations
12 omitted). See Adam J. Levitin, *Toward A Federal Common Law of Bankruptcy: Judicial*
13 *Lawmaking in a Statutory Regime*, 80 Am. Bankr. L.J. (2006) (forthcoming). "Other than
14 the requirement that the petition be a 'voluntary' act, 11 U.S.C. § 301, the Bankruptcy
15 Code does not establish what the internal requisites are for the initiation of a voluntary
16 corporate bankruptcy proceeding." *In re Quarter Moon Livestock Co., Inc.*, 116 B.R. 775,
17 778 (Bankr. D. Idaho 1990), quoting *In re Autumn Press, Inc.*, 20 B.R. 60, 61 (Bankr. D.
18 Mass. 1982).

20 Additionally, there is an exception to the federal common law reliance on state law
21 when the state law is in the form of a receivership order that attempts to preclude any of
22 the original constituents of the organizational entity from filing a petition on its behalf, in
23 order to maintain the state court remedy that has been obtained by creditors. It makes no
24 difference whether the corporate officers and directors were actually removed by the
25 receiver or the receivership order merely enjoins their interference or filing of a petition.
26 In either case, **state law withdraws their authority to file for bankruptcy relief and**
27 **yet in both cases the unanimous federal common law holds that they are**
28 **nevertheless entitled to do so.** Much of this common law predates the drafting and

1 adoption of the Bankruptcy Code, so Congress must be assumed to have incorporated it
2 when it drafted the Code. If removal of corporate officers and directors by a receivership
3 order were sufficient to prevent a bankruptcy filing, creditors who seek their state court
4 remedies to the exclusion of all others would routinely obtain receivership orders with
5 such boilerplate language. This is a tactic that bankruptcy law has prevented at least since
6 1867. (*In re Corporate & Leisure Event Productions, Inc.*, at 731).

7 Congress expressly incorporated this Federal common law when the **Chandler**
8 **Act of 1938 made explicit that a bankruptcy case would ordinarily supersede a state**
9 **receivership and that a state receiver would ordinarily be required to turn over the**
10 **estate assets to a debtor in possession or trustee pursuant to Section 543.** The fact that
11 Congress granted such express relief notwithstanding that receivership orders generally
12 included the "usual injunction against inference" necessarily implies that Congress
13 intended such state law not to control who may petition for bankruptcy relief. (*In re*
14 *Corporate & Leisure Event Productions, Inc.*, at 732; 1 JAMES WM. MOORE, ET AL.,
15 COLLIER ON BANKRUPTCY ¶ 2.77, at 390.8 (1) (14th ed. 1974); H.R. 6439, 75th
16 Cong., 1st Sess 12 (1937), quoted in COLLIER, *supra*, at 390.8(2), n. 4).

17 Congress obviously intended bankruptcy relief to be available for the benefit of
18 many of the constituents of a business entity, including not only the creditor interests but
19 also the equity interests and perhaps those of employees and customers as well. While
20 bankruptcy case law generally refers to state law to determine who has eligibility to file
21 the petition, it unanimously refuses to do so (in the absence of an intra-corporate dispute)
22 when state law has provided a creditor's remedy to vest that authority in a receiver. (*In re*
23 *Corporate & Leisure Event Productions, Inc.*, at 732)

24 The Court in *In re Corporate & Leisure Event Productions, Inc.* applied the
25 Federal common law and denied the Receiver's Motion to Dismiss. The facts in *In re*
26 *Corporate & Leisure Event Productions, Inc.* are almost identical to the Debtor's case
27 herein. The dispute as to whether Jeffrey Ahlholm and Lawrence F. Feigen had authority
28

1 to file Bankruptcy for the Debtor is brought by a Receiver appointed by creditor Twain.
2 The cases cited by Twain are all intra-corporate disputes, and not disputes brought by a
3 Receiver appointed by a creditor. Although in intra-corporate disputes, Bankruptcy
4 Courts have applied state law to determine that the appointment of a receiver and removal
5 of Debtor's corporate management results in a debtor's former management not having
6 authority to file a Bankruptcy case on behalf of a corporate debtor, the facts herein are
7 distinguishable.

8 *In re Corporate & Leisure Event Productions, Inc.* affirmatively states that in the
9 scenario where the Receiver was appointed by creditors of the debtor, such as is here, the
10 receivership orders and injunctions preventing the Debtor from filing Bankruptcy are
11 unconstitutional and that the Debtor has a constitutional right to file the instant
12 Bankruptcy petition herein. Wherefore, Debtor asks that the Court deny Twain's Motion
13 to Dismiss.
14

15 B. Twain's Authority Does Not Support Twain's Proposition that Debtor's
16 Bankruptcy Case Must be Dismissed as Twain's Receivership Order Limiting
17 the Debtor's Management's Ability to File Bankruptcy is Not Binding

18 Twain relies on *In re Licores*, 8:13-bk-10578-MW, to predicate its Motion to
19 Dismiss. In *In re Licores*, a receiver was appointed prior to the debtor filing Bankruptcy
20 after a State Court Action was brought among five brothers regarding their ownership
21 interests in the partnership that owned and operated several businesses. The State Court
22 made a determination of each of the five brothers' ownership interests, and made findings
23 that certain brothers were engaging in fraudulent activities as to the remaining brothers-
24 partners. The prevailing party in the State Court action sought the appointment of a
25 receiver to manage the partnership. In *In re Licores*, the receiver was appointed due to an
26 intra-corporate dispute.

27 After appointment of the receiver, one of the brothers continued to seek removal of
28 the receiver in the State Court, and when that failed, the same brother filed Bankruptcy

1 for the debtor In *In re Licores* despite the receivership order having language expressly
2 limiting the right to file Bankruptcy solely with the receiver. The receiver in *In re Licores*
3 filed a Motion to Dismiss pursuant to 11 U.S.C. § 305 and argued that dismissal was in
4 the best interest of creditors as the receiver had been in place for nearly one and a half
5 years and had eliminated many of the major issues plaguing the operations of the
6 Debtor's business. (See *In re Licores*, 8:13-bk-10578-MW, Docket no.: 24, Page 22,
7 Lines 9-12). Further, the receiver argued that the restrictions as to who had authority to
8 file Bankruptcy for the debtor in *Licores* should apply. The Court in *In re Licores* found
9 that the brothers did not have authority to file Bankruptcy for the debtor. However, this
10 case is distinguishable from the Debtor's case herein as the receiver in *In re Licores*, the
11 receiver was appointed due to an intra-corporate dispute, which upholds State Court
12 restrictions on filings Bankruptcy in receivership orders. However, as noted in *In re*
13 *Corporate & Leisure Event Productions, Inc.*, when the receiver is appointed by a
14 creditor, the restrictions on filing Bankruptcy by Debtor's management is not upheld in
15 the Bankruptcy Court, as it is a violation of the Debtor's constitutional rights.

17 Twain next cites to *Chitex Commc'n, Inc. v. Kramer*, 168 B.R. 587, 589-91 (S.D.
18 Tex. 1994) where again a receiver was appointed as a result of an ownership dispute as to
19 the debtor in the State Court. Again, this case is distinguishable as the receiver was not
20 appointed by a creditor, and as a result the Bankruptcy Court dismissed that debtor's case.

21 Twain then cites to *Sino Clean Energy, Inc. v. Seiden (In re Sino Clean Energy,*
22 *Inc.)*, 901 F.3d 1139 (9th Cir. 2018) where the appellate court upheld the bankruptcy
23 court dismissal of the Debtor's Bankruptcy petition because it found that the petition
24 lacked the requisite authority from the corporation's board of directors where a receiver
25 appointed by the Nevada state court already had removed them from the corporation's
26 board of directors. (*Sino Clean Energy, Inc. v. Seiden (In re Sino Clean Energy, Inc.)*, 901
27 F.3d 1139, 1140 (9th Cir. 2018)). In *Sino*, a group of forty-three shareholders had filed a
28 Nevada state-court petition in an attempt to acquire financial information from the debtor

1 and for declaratory relief. The shareholder plaintiffs filed for entry of default, which the
2 state court granted and a few months after an entry of default, on March 17, 2014, the
3 shareholder plaintiffs filed a motion for the appointment of a receiver. The Nevada state
4 court granted the motion on May 12, 2014. *Sino Clean Energy, Inc. v. Seiden (In re Sino*
5 *Clean Energy, Inc.)*, 901 F.3d 1139, 1140 (9th Cir. 2018)

6 Again, this case is distinguishable from the Debtor's case herein as in *Sino* the
7 shareholder's sought the receivership over the debtor, which is an intra-corporate dispute.
8 As pointed out in *In re Corporate & Leisure Event Productions, Inc.*, and is the case here,
9 the receiver in Debtor's case was appointed by a creditor and not as a result of an intra-
10 corporate dispute, and pursuant to *In re Corporate & Leisure Event Productions, Inc.*
11 restrictions to file Bankruptcy in a receivership order are not upheld.

12 Twain cites to *Tenneco West, Inc. v. Marathon Oil Co.*, 756 F.2d 769 (9th Cir.
13 1985) which does not apply to this case at all, as the issue in *Tenneco* was "whether the
14 district court was correct in ruling that the tax clause in certain oil and gas leases shifts
15 from lessor to lessee the incidence of the tax levied under the Crude Oil Windfall Profit
16 Tax Act of 1980 ("Act"), 26 U.S.C. § 4986 et seq. (1982)." *Tenneco West, Inc. v.*
17 *Marathon Oil Co.*, 756 F.2d 769, 770 (9th Cir. 1985)

18 Twain has not provided any authority in support of its contention that Debtor's
19 case must be dismissed due to the restrictions in the Receivership Order. As held in *In re*
20 *Corporate & Leisure Event Productions, Inc.*, restrictions in receivership orders, as they
21 relate to a debtor's management filing Bankruptcy for the debtor are only upheld when
22 the receiver was appointed as a result of an intra-corporate dispute, and not when a
23 receiver is appointed by a creditor of the Bankruptcy estate.

24
25 C. Debtor's Case is in the Best Interest of All Creditors of the Estate Versus
26 Continuance of the Receiver Only Benefits the Receiver and Twain

27 Debtor filed this Chapter 11 Bankruptcy case in an attempt to regain management
28 of the Debtor and its Hospital, reopen the Debtor's Hospital and sell the Hospital and

1 assign Tenant's Ground Lease with Twain, to generate sufficient funds to pay off the
2 creditors of the estate. Debtor's management believes selling the Debtor and Tenant's
3 assets together as an ongoing concern will generate significantly more money for the
4 creditors, then a fire sale of the assets by the Receiver. Debtor currently has three (3)
5 possible buyers lined up who Debtor believes can complete the sale, which would not
6 only pay off Twain in full, but also provide significantly more funds for the remaining
7 creditors of the estate. The combined sale of Debtor and Tenant's assets as an ongoing
8 concern, while keeping the hospital license intact will realize at least \$8,000,000.00 in
9 additional short-term value and over \$10,000,000.00 in long-term value to the creditors
10 of the estate by keeping the residency slot contract and program intact. Twain instead
11 seeks a piecemeal fire sale of the assets, which will benefit only Twain, to the detriment
12 of all the remaining creditors of the estate.

13
14 Debtor's reorganization in Bankruptcy is in the best interest of all creditors,
15 whereas the Receiver's resumption of the fire sale of the Debtor's assets will only benefit
16 Twain and the Receiver. Through the Bankruptcy, the Debtor seeks to obtain a more
17 experienced healthcare receivables manager along with critical licensing and compliance
18 management while the Debtor and Tenant sell the combined assets. Debtor believes it can
19 effectuate a sale of the Debtor and Tenant's assets quickly given it has three (3) potential
20 buyers lined up, which will result in the highest realized value of the Debtor's and
21 Tenant's assets to pay significantly more to the creditors than they would receive through
22 the Receiver's liquidation efforts.

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IV. CONCLUSION

Wherefore, Debtor asks that the Court deny Twain's Motion to Dismiss Chapter 11, and grant any further relief deemed necessary and proper.

Dated: August 17, 2023

LAW OFFICES OF MICHAEL JAY BERGER

By:



MICHAEL JAY BERGER

Proposed Counsel for Debtor-in-Possession,
SA Hospital Acquisition Group, LLC

DECLARATION OF JEFFREY AHLHOLM

I, Jeffrey Ahlholm, declare and state as follows:

1. I am a managing member of SA Hospital Acquisition Group, LLC, the Debtor and Debtor-in-Possession (the “Debtor”). I am over the age of 18. I have personal knowledge of the facts I state below, and if I were to be called as a witness, I could and would competently testify about what I have written in this declaration.

2. Lawrence E. Feigen and I, as co-managing members of SA Hospital Acquisition Group, LLC, (the “Debtor”) filed a voluntary Chapter 11 petition on behalf of the Debtor on August 11, 2023. The Debtor is a guarantor of debt incurred by SA Hospital Real Estate Holdings, LLC (the “Tenant”). The Debtor and Tenant have common ownership and management. Prior to appointment of the receiver, both the Debtor and Tenant were managed by Lawrence E. Feigen and myself. The members of both the Debtor and Tenant are Jeffrey Ahlholm, Lawrence E. Feigen, and Troy A. Schell.

3. Twain is the owner of the raw land only and the landlord of the Tenant. Tenant owns the buildings and improvements of the Premises. Twain shares the value and ownership of the real estate property with Tenant. Twain has no ownership interest in Debtor, which is only a guarantor of the Twain 99-year lease.

4. On or about December 29, 2021, Tenant and Twain entered into a 99-year ground lease (the “Ground Lease”), whereby Tenant leased Twain’s property, and subleased the property to the Debtor, for the purpose of owning and operating the South City Hospital in St. Louis, Missouri (the “Hospital”), in exchange for certain base and supplement rent payments, among numerous other obligations. In conjunction with the execution of the Ground Lease, the Debtor (among other guarantors) executed a “Completion and Rent Payment Guaranty” in favor of Twain, guaranteeing all obligations owed by Tenant under the Ground Lease (the “Guaranty”).

1 Contemporaneous with the execution of the Ground Lease and the Guaranty, Tenant and
2 the Debtor entered into a Master Lease and Sublease Agreement permitting the Debtor to
3 operate the Hospital (the “Sublease”).

4 5. Per the Ground Lease, Tenant and Debtor made all of its quarterly rent
5 payments to Twain from January 2022 through December 2022, which were capitalized
6 into the Ground Lease Agreement at the mutual agreement of Twain and SA Hospital on
7 December 29, 2021.

8 6. As part of the Ground Lease, Twain directly funded Building Resources, a
9 mutually approved general contractor, in the amount of \$6,460,063.24, for hospital
10 improvements, based on detailed project requests and budgets. Building Resources failed
11 to complete the construction by the agreed-upon completion date and Debtor believes
12 Building Resources misappropriated at least \$1,996,644.56 of Twain Funding for the
13 hospital improvements.

14 7. On May 24, 2022, Debtor entered into an Asset Purchase Agreement
15 (“APA”) and customary Interim Management Agreement (“IMA”) with
16 American Healthcare Systems (“AHS”). Upon entering into the APA between the Debtor
17 and AHS, AHS began transitioning the operations and management of the Debtor’s
18 hospital business to AHS and AHS assumed the financial responsibility of operating the
19 hospital at that time. During the period AHS took control of the operations and
20 management of the Debtor’s hospital business, AHS stopped making payments to Twain
21 on the Ground Lease, and AHS incurred over \$10,000,000.00 in debt and Debtor was
22 named in 16 lawsuits.

23 8. On May 16, 2023, Twain sued the Debtor and Tenant in the Circuit Court
24 of the City of St. Louis, Missouri, Case No. 2322-CC00960 (the “Receivership Action”).
25 Twain sought the emergency appointment of a state court receiver of the Debtor and
26 Tenant, their property and their operations. On, May 25, 2023, Circuit Court of the City
27 of St. Louis, Missouri appointed Daniel Wiggins of Morris Anderson & Associates, Ltd.
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1 (the "Receiver") as receiver of the Debtor and Tenant, their operations, and their assets
2 (the "Receiver Order").

3 9. The Receiver promised to provide the Debtor with general ledgers and
4 other financial records at the beginning of the Receivership, but has to date yet to provide
5 any financial records to Debtor's management. Initially, the Receiver discussed with
6 Debtor's management the possibility of filing Bankruptcy for the Debtor and selling the
7 Debtor's hospital business as a going concern. Twain and the Receiver instead have
8 temporarily shut down the Debtor's hospital operations and attempted to do a liquidation
9 of the Debtor's assets which would realize far less value for the benefit of the creditors,
10 than could be realized if the Debtor is permitted to reopen the hospital and sell it as a
11 going concern.

12 10. Debtor filed this Chapter 11 Bankruptcy case in an attempt to regain
13 management of the Debtor and its hospital business operations, reopen the Debtor's
14 hospital and sell the hospital and assign Tenant's Ground Lease with Twain, to generate
15 sufficient funds to pay off the creditors of the estate. Debtor's management believes
16 selling the Debtor and Tenant's assets together as an ongoing concern will generate
17 significantly more money for the creditors, then a fire sale of the assets by the Receiver.
18 Debtor currently has three (3) possible buyers lined up who Debtor believes can complete
19 the sale, which would not only pay off Twain in full, but also provide significantly more
20 funds for the remaining creditors of the estate.

21 11. Prior to the appointment of the Receiver, Debtor's management tried to
22 discuss the potential buyers Debtor has lined up with Twain, but Twain refused to
23 entertain the idea of the sale and moved forward with the receivership. The combined
24 sale of Debtor and Tenant's assets as an ongoing concern, while keeping the hospital
25 license intact will realize at least \$8,000,000.00 in additional short-term value and over
26 \$10,000,000.00 in long-term value to the creditors of the estate by keeping the residency
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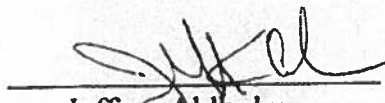
1 slot contract and program intact. Twain instead seeks a piecemeal fire sale of the assets,
2 which will benefit Twain, to the detriment of all the remaining creditors of the estate.

3 12. During the brief period of the receivership, the Receiver made no efforts to
4 pursue AHS or Building Resources to recover against the significant damages these
5 entities cause the Debtor, Tenant, Twain and all the creditors of the estate.

6 13. Debtor's reorganization in Bankruptcy is in the best interest of all creditors,
7 whereas the Receiver's resumption of the fire sale of the Debtor's assets will only benefit
8 Twain and the Receiver. Through the Bankruptcy, the Debtor seeks to obtain a more
9 experienced healthcare receivables manager along with critical licensing and compliance
10 management while the Debtor and Tenant sell the combined assets. Debtor believes it can
11 effectuate a sale of the Debtor and Tenant's assets quickly given it has three (3) potential
12 buyers lined up, which will result in the highest realized value of the Debtor's and
13 Tenant's assets to pay significantly more to the creditors than they would receive through
14 the Receiver's liquidation efforts.
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16
17 I declare under penalty of perjury under the laws of the United States that the
18 foregoing is true and correct and that if called as a witness, I can and will testify
19 competently thereto.

20 Executed August 17, 2023 at Novato, CA, California.

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23 
24 Jeffrey Ahlholm
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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
9454 Wilshire Blvd., 6th Fl., Beverly Hills, CA 90212

A true and correct copy of the foregoing document entitled (*specify*): **DEBTOR'S OPPOSITION TO TWAIN GL XXV, LLC'S MOTION TO DISMISS CHAPTER 11 CASE; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF JEFFREY AHLHOLM IN SUPPORT THEREOF** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) 8/17/2023, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:
Proposed Counsel for Debtor: Michael Jay Berger michael.berger@bankruptcypower.com,
yathida.nipha@bankruptcypower.com;michael.berger@ecf.inforruptcy.com
U.S. Trustee: Brian David Fittipaldi brian.fittipaldi@usdoj.gov
Counsel for Twain GL XXV, LLC: Marshall J Hogan mhogan@swlaw.com, knestuk@swlaw.com
United States Trustee (ND) ustpregion16.nd.ecf@usdoj.gov

☐ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) _____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) 8/17/2023, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Honorable Ronald A. Clifford III
United States Bankruptcy Court
Central District of California
1415 State Street, Suite 233 / Courtroom 201
Santa Barbara, California 93101-2511

Served by Email:

Counsel for Twain GL XXV, LLC: Marshall J. Hogan at mhogan@swlaw.com
Counsel for Twain GL XXV, LLC: Anthony P. Cali at Anthony.cali@stinson.com

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

8/17/2023
Date

Yathida Nipha
Printed Name

/s/Yathida Nipha
Signature

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.